

IN THE SUPREME COURT OF MISSOURI

STATE ex rel. THE SCHOOL DISTRICT)	
OF KANSAS CITY, MISSOURI, et al.,)	
)	
Relators,)	
)	
v.)	No. SC86233
)	
The Honorable J.D. WILLIAMSON, JR.,)	
)	
Respondent.)	

**RELATORS' SUBSTITUTE BRIEF
SEEKING A WRIT OF PROHIBITION**

Relators submit this Substitute Brief pursuant to Rule 83.08(b) of the Missouri Rules of Civil Procedure. Relators respectfully move the Court to issue a writ of prohibition that would bar respondent from granting the plaintiff, Westport Community Schools, Inc., preliminary injunctive relief and from otherwise exercising jurisdiction over this matter. The Court should issue a writ of prohibition because the Kansas City, Missouri's School District's decision not to renew the charter agreement with plaintiff is not subject to judicial review pursuant to the Missouri Administrative Procedure Act and because the Circuit Court's order barring the School District from opening public School District property for student instruction exceeds the Circuit Court's jurisdiction.

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JURISDICTIONAL STATEMENT

This writ proceeding is before the Court on relators' Petition in Prohibition seeking to prohibit the Circuit Court of Jackson County from exercising jurisdiction and from enforcing its Order granting preliminary injunctive relief.

This Court has jurisdiction pursuant to Missouri Constitution Article V, § 4, having ordered this case transferred to this Court from the Court of Appeals after an Opinion of the Court of Appeals pursuant to Missouri Rules of Civil Procedure 83.04

STATEMENT OF FACTS

I. The Parties

Relator/defendant, the Kansas City, Missouri, School District (“the School District”), is a public governmental body established and organized under the Missouri Revised Statutes. See Mo. Rev. Stat. § 162.47, et seq. Relator/defendant, Dr. Bernard Taylor, Jr., is the Superintendent of the School District. The other individual named relators/defendants are members of the School District’s Board of Directors.

Plaintiff, Westport Secondary Community Schools, Inc. (“Westport”), is a charter school organized pursuant Missouri Revised Statutes §§ 160.400-160.420. The Charter Schools Act, §§ 160.400-160.420 of the Missouri Revised Statutes, is attached in the Appendix, Tab C, pp. A22-A31. Westport has been in operation continuously for five years since the 1999-2000 school year. Since it opened, Westport has occupied two School District buildings located at 300 and 315 East 39th Street, Kansas City, Missouri 64111. Westport has been using the School District’s buildings for no charge and without a lease agreement since the 1999-2000 school year.

II. Nature of The Underlying Action

Westport filed its original Petition for Judicial Review and Other Relief in the Circuit Court of Jackson County, Missouri at Kansas City. The basis of Westport’s Petition is Westport’s claim that it is entitled to judicial review of an agency decision in a contested case. See Petition for Judicial Review and Other Relief ¶5, L.F., Tab 4, pp. 26-57. Westport also cites the Charter Schools Act, Mo. Rev. Stat. §§ 160.405.4 and

160.405.7(4), as a basis for its claim. Id. Westport’s Petition does not seek review of an “uncontested case” as defined by Mo. Rev. Stat. § 536.150. See id.

III. In 1999, The School District Agreed to Act as Westport’s Charter Sponsor

In November 1998, Westport submitted a proposed charter application to the School District, proposing that the School District act as Westport’s charter sponsor. See Charter Application, L.F., Tab 104, pp.1387-2260. Westport’s proposed charter application stated that Westport would enter into a 5-year agreement with Edison Schools, Inc., to manage and operate a middle school and a high school. See Charter Application, L.F., Tab 104, p. 1417. In April 1999, the School District sent Westport a letter indicating its agreement to act as sponsor to Westport. See April 1999 letter, L.F., Tab 41, p. 710. The Missouri State Board of Education reviewed the charter and did not disapprove it. Westport’s charter application thereafter became the charter “contract” under which it operated as a charter school. See Mo. Rev. Stat. §§ 160.405 and 160.400.5 (Appendix, Tab C, pp. A22-A27).

IV. The Charter That Westport Drafted and Submitted Did Not Contain a Term

The charter as drafted by Westport did not contain a term. See Charter application, L.F., Tab 104, pp. 1387-2260. School District representatives understood the term to be for five years, expiring on June 30, 2004, at the conclusion of the 2003-2004 school year. The Missouri Department of Elementary and Secondary Education also considered the Westport charter to have a five-year term. See Affidavit of Jocelyn Strand, Director of Charter Schools, L.F., Tab 13, p. 431.

V. The Board of Directors for the School District Voted Not to Renew Westport's Charter for An Additional Term

The agreement between Westport and Edison Schools, Inc., was effectively terminated on December 22, 2003, and Edison ceased to operate Westport's schools. Petition for Judicial Review and Other Relief ¶11, L.F., Tab 4, p. 29; see also Order Granting Preliminary Injunction ¶ 6, Appendix, Tab A, p. A2. At several points during the 2003-2004 school year, School District representatives communicated to Westport representatives that the charter would expire on June 30, 2004, and that Westport needed to submit an application for renewal of the charter. See February 11, 2004, letter from Dr. Taylor, L.F., Tab 69, pp. 1194 to 1197; Petition for Judicial Review and Other Relief ¶ 19, L.F., Tab 4, p. 31. The School District communicated that because Westport had unilaterally changed material aspects of its programs when it ended its agreement with Edison -- including curriculum, professional development, management, and fiscal operations -- without seeking an amendment of the charter, Westport's renewal application would need to address the proposed changes fully in order to satisfy reporting requirements of § 160.405. Id. Finally, in addition to requesting the renewal application, the School District retained KPMG and the Higher Education Partnership to conduct audits of Westport in order to evaluate its operations and programs. Id.

In response to the School District's requests, Westport submitted a renewal application and supplemental materials in support of its application. See Petition for Judicial Review and Other Relief ¶22, L.F., Tab 4, p. 32. During the course of the communications surrounding Westport's charter application, Westport never claimed that

the charter would not expire on June 30, 2004. Additionally, Westport did not claim that the charter was for a longer term than five years. Westport first asserted that the charter was for a term longer than five years during the course of this litigation.

As a part of the renewal process, the School District provided to Westport the following: (1) advanced, formal notice of the expiration of the charter by letter dated February 11, 2004, and an invitation to submit a request to renew the charter; (2) a meeting at Westport's request on March 24, 2004, between the School District's Superintendent, Dr. Bernard Taylor, Jr., in which Dr. Taylor informed Westport representatives of issues that would need to be addressed in the charter application; (3) notice to Westport of the deficiencies in the proposed charter that it submitted on April 1, 2004, before the Board of Directors for the School District considered the matter; (4) an opportunity to submit supplemental information to respond to the deficiencies before the Board considered the matter; (5) an opportunity to meet with the Superintendent before the Board of Directors' meeting and notice of the proposed Board's action to not renew the charter; and (6) an opportunity to respond to the proposed action in front of the Board of Directors, with Westport's counsel present. L.F., Tab 7, pp. 212-295; Petition for Judicial Review and Other Relief ¶¶ 22, 28, L.F., Tab 4, pp. 32-33.

On April 28, 2004, the Board of Directors of the School District of Kansas City, Missouri, voted not to renew plaintiff's charter beyond its initial term. See Certification, L.F., Tab 43, p. 717. The School District notified Westport of its decision in writing on May 5, 2004. L.F., Tab 58, pp. 774-780.

VI. Westport Initiated This Litigation, Seeking a Court Order That the School District Continue to Act as Westport's Sponsor and that Westport Be Able to Continue to Occupy School District Buildings

Westport did not pursue its administrative remedies by seeking potential sponsorship by the Missouri State Board of Education or other potential sponsors as provided for by Mo. Rev. Stat § 160.405.2(3). Rather, on May 4, 2004, Westport filed a Petition for Judicial Review and Other Relief ("Petition") and a Motion for Temporary and Preliminary Injunctive Relief. L.F., Tab 4, pp. 26-57; Tab 5, pp. 58-71. Defendants filed an Answer to plaintiff's Petition. L.F., Tab 11, pp. 352-366. The underlying case was assigned to respondent, the Honorable J.D. Williamson, Jr.

In its Petition and Motion for Temporary and Preliminary Injunctive Relief, Westport sought judicial review of the decision by the School District's Board of Directors not to renew Westport's charter to operate as a charter school after the current charter expires on June 30, 2004. See Petition ¶¶ 5, 67-69, L.F., Tab 4, pp. 27-28; Plaintiff's Motion for Temporary and Preliminary Injunctive Relief and Suggestions in Support of Motion, L.F., Tab 5, pp. 58-71. Westport claimed that the Circuit Court had subject matter jurisdiction to review the Board of Directors' decision under Missouri Revised Statutes §§ 536.100-536.120 and that the underlying proceeding was a "contested case" under the Missouri Administrative Procedure Act. Id. In its briefs and during the hearing before the Circuit Court, the School District defendants argued that the Court did not have subject matter jurisdiction to review the decision by the School District's Board of Directors on the grounds asserted by Westport.

On May 6, 2004, the School District defendants filed a Legal Memorandum in Opposition to Plaintiff's Motion for Stay and for Temporary and Preliminary Injunctive Relief. See L.F., Tab 6, pp. 72-211. On May 14, 2004, the School District defendants filed a Supplemental Legal Memorandum in Opposition to Plaintiff's Motion for Stay and for Temporary and Preliminary Injunctive Relief. See L.F., Tab 7, pp. 212-294.

Westport filed Reply Suggestions in Opposition to the School District's Legal Memorandum, L.F., Tab 8, pp. 295-321, and Reply Suggestions in Opposition to the School District's Supplemental Legal Memorandum, L.F., Tab 9, pp. 322-337.

The Circuit Court heard evidence regarding plaintiff's Motion for Temporary and Preliminary Injunctive Relief on Friday, May 14, 2004, and from Monday, May 17 to Thursday, May 20, 2004. The following evidence was submitted to the Circuit Court regarding the School District's understanding of the charter term:

- A. Evidence that the charter application provided that Edison Schools, Inc. ("Edison"), would manage all of Westport's operations and programs, including school curriculum, professional development, and budget, and that the contract between Edison and Westport was for a five-year term, expiring at the conclusion of the 2003-2004 school year. See Charter Application, L.F., Tab 104, p. 1394; Contract between Edison and Westport, L.F., Tab 66, p. 1138; Order Granting Preliminary Injunction ¶ 5, Appendix, Tab A, p. A1.
- B. Deposition testimony of Jocelyn Strand, the Director of Charter Schools for the Missouri Department of Elementary and Secondary

Education (“DESE”), wherein Ms. Strand testified that based on her review of Westport’s charter application and the understanding at the time the charter was granted, the charter had a five-year term. See Depo. of J. Strand, L.F., Tab 12, pp. 367-429 (deposition p. 3, line 4; p. 4, line 4; p. 6, lines 13-19; p. 8, line 9; p. 9, line 23; p. 12, line 16- p. 12, line 22).

- C. Affidavit of Jocelyn Strand, wherein Ms. Strand testified that the Westport’s charter was for a five-year term and was due to expire on June 30, 2004. See Affidavit of J. Strand, L.F., Tab 13, p. 431.
- D. Testimony of Bonnie McKelvy, the Financial Officer of the School District, in which she testified that Westport’s charter was for five years. (Transcript of trial testimony not yet available.)
- E. Deposition testimony of defendant, Dr. Taylor, the Superintendent of the School District, wherein he stated that Westport’s charter was for a five-year term, and that he received correspondence from Kent King, the Commissioner of Education for DESE, stating that Westport’s charter was for five years. See Depo. of Dr. Taylor, L.F., Tab 14, pp.433-491 (deposition p. 39, line 18; p.41, line 17 and Taylor Depo. Ex. 3); see also Order Granting Preliminary Injunction ¶¶ 12 and 14, Appendix, Tab A, p. A2.
- F. Westport did not offer any testimony or evidence tending to show that the term of the charter was longer than five years. Rather,

Westport argued that because the final charter application that it drafted in 1999 was silent with regard to term, the court should construe the charter term for the longest possible period, ten years.

At the close of Westport's evidence, the defendants moved for judgment as a matter of law. See School District defendants' Motion for Judgment at the Close of Plaintiff's Evidence, L.F., Tab 10, pp. 338-351. Plaintiff and defendants also filed Proposed Findings of Fact and Conclusions of Law to the Court. See Plaintiff's Proposed Findings of Fact and Conclusions of Law, L.F., Tab 15, pp. 492-503 and Defendants' Proposed Findings of Fact and Conclusions of Law, L.F., Tab 16, pp. 504-518. In plaintiff's Proposed Findings of Fact and Conclusions of Law, plaintiff admitted that there was no lease agreement between Westport and the School District under which Westport had any legal right to occupy the School District's facilities. See Plaintiff's Proposed Findings of Fact and Conclusions of Law, L.F., Tab 15, p. 493.

After the evidentiary hearing, the Circuit Court issued an Order granting Westport preliminary injunctive relief. The Circuit Court ordered that:

- a. Westport is entitled to preliminary injunction prohibiting the District from terminating the agreement as of June 30, 2004, and;
- b. Until statutory procedures are followed as set out in this order, *the District shall not engage in any act or omission that would withdraw, rescind, terminate or interfere with Westport's use of the school facilities*

and/or equipment and property therein for the conduct of school operations; and

- c. *The District shall not attempt expressly or impliedly to induce students to attend District schools other than Westport for summer school or the Fall 2004-Spring 2005 school year, nor shall the District attempt to induce teachers at Westport to contract to teach elsewhere....*

See Circuit Court's Order of June 25, 2004 (emphasis added), attached in Appendix, Tab A, pp. 1-7 (L. F., Tab 17, pp. 519-525). The Circuit Court further ordered that the preliminary injunction would remain in place "until statutory procedures are followed as set out in this order." Id. The Circuit Court further held that the procedures for renewal of a charter are the same as for initial charter application. Id. at ¶ 7.

On June 25, 2004, relators filed a Petition in Prohibition with the Missouri Court of Appeals, Western District. L.F., Tab 2, pp. 8-23. On July 27, 2004, the Court of Appeals issued a Writ of Prohibition, holding that the Circuit Court did not have jurisdiction under the MAPA. See Opinion, attached in Appendix, Tab B, pp. A8-A21 (L.F., Tab 73, pp. 1202-1215). The Court of Appeals accordingly ordered the Circuit Court to dissolve the preliminary injunction and to dismiss Westport's Petition. Id.

On August 10, 2004, relators filed a Motion to Suspend Preliminary Injunction with the Court of Appeals. L.F., Tab 75, pp. 1220-1228. On August 11, 2004, Westport filed post-opinion motions with the Court of Appeals. L.F., Tabs 77, 78, 79,

pp.1230-1259. On August 16, 2004, the Court of Appeals issued Orders denying Westport's post-opinion motions and granting the School District's Motion to Vacate Preliminary Injunction. L.F., Tabs 76, 80, pp. 1229, 1260.

On August 19, 2004, this Court issued an Order accepting transfer of this cause. The Court further ordered that the Circuit Court's Order granting injunctive relief be reinstated, and that the Order by the Court of Appeals suspending the Circuit Court's Order be dissolved. L.F., Tab 97, p. 1369.

POINTS RELIED ON

- I. Relator is entitled to an order prohibiting respondent from granting plaintiff a preliminary injunction and from otherwise exercising jurisdiction over this matter because the Circuit Court does not have subject matter jurisdiction over Westport's claims to review the underlying agency proceeding under the Missouri Administrative Procedure Act.**

State ex rel. T.W. v. Ohmer, 133 S.W.3d 41 (Mo. 2004) (en banc)

Mo. Rev. Stat. §§ 536.100-536.150.

State ex rel. Yarber v. McHenry, 915 S.W.2d 325 (Mo. 1995) (en banc)

Mosley v. Members of the Civil Serv. Bd. for the City of Berkeley,
23 S.W.3d 855 (Mo. Ct. App. 2000)

Cooper v. Missouri Bd. of Probation and Parole, 866 S.W.2d 135 (Mo.
1993) (en banc)

- II. Relator is entitled to an order prohibiting respondent from ordering the School District to continue to open its school facilities to Westport and to refrain from contacting School District employees who are assigned to work at Westport regarding their employment because the Circuit Court exceeded its jurisdiction in its order and the effect is contrary to relators' legal obligations as a public school district.**

State ex rel. T.W. v. Ohmer, 133 S.W.3d 41 (Mo. 2004) (en banc)

Coalition to Preserve Educ. of the Westside v. School Dist. of Kansas City,

649 S.W.2d 533 (Mo. Ct. App. 1983)

Mo. Const., Article IX, § 1(a)

Mo. Rev. Stat. § 177.131

Mo. Rev. Stat. § 432.070

ARGUMENT

I. The Circuit Court Should be Prohibited From Granting Plaintiff Injunctive Relief Because the Circuit Court Does Not Have Jurisdiction Over Plaintiff's Claims Under the Missouri Administrative Procedure Act

Point relied on: Relator is entitled to an order prohibiting respondent from granting plaintiff a preliminary injunction and from otherwise exercising jurisdiction over this matter because the Circuit Court does not have subject matter jurisdiction over Westport's claims to review the underlying agency proceeding under the Missouri Administrative Procedure Act.

A. Standard for Writ of Prohibition

A writ of prohibition is proper *in any one* of the following three circumstances: “(1) to prevent the usurpation of judicial power when the trial court lacks jurisdiction; (2) to remedy [an] excess of jurisdiction or an abuse of discretion where the lower court lacks the power to act as intended; or (3) where a party may suffer irreparable harm if relief is not made available in response to the trial court's order.” State ex rel. T.W. v. Ohmer, 133 S.W.3d 41, 43 (Mo. 2004) (en banc), citing State ex rel. Proctor v. Bryson, 100 S.W.3d 775 (Mo. 2003) (en banc). This Court has recognized that a party may seek a writ of prohibition against a trial court's order granting injunctive relief. State ex rel. Director of Revenue v. McHenry, 861 S.W.2d 562, 564 (Mo. 1993) (en banc). Moreover, prohibition is available as a remedy to prevent a trial court from exceeding its subject matter jurisdiction or exceeding its jurisdiction in general. See, e.g., State ex. rel. Gaydos

v. Blaeuer, 81 S.W.3d 186, 190 (Mo. Ct. App. 2002), citing State ex rel. Armstrong v. Kohn, 850 S.W.2d 86, 89 (Mo. 1993) (en banc).

In this case, each of the standards for the issuance of a writ is satisfied. First, a writ of prohibition is appropriate because the Circuit Court lacked subject matter jurisdiction to review relators' decision not to renew the Westport charter. Second, a writ of prohibition is appropriate because the Circuit Court exceeded its jurisdiction by ordering relators to relinquish their access to School District property and to discontinue communication with the School District's employees. Finally, a writ of prohibition is appropriate because the Circuit Court's decision would result in irreparable harm to the School District, its employees, and students by interfering with the School District's statutorily mandated obligation to direct the use of its school buildings and to operate the School District in the best interest of its students.

Westport claims that the Court of Appeals improperly granted a writ of prohibition, arguing that relators must also show that there is not an adequate remedy provided by appeal. However, this requirement is not mandated by this Court's holdings in Ohmer and Proctor. Moreover, even if the standard articulated by Westport were correct, a writ of prohibition would still be appropriate in this case. Typically a party cannot appeal from an interlocutory order granting preliminary injunctive relief. See Mo. Rev. Stat. §512.020. Additionally, because of the exigent circumstances in this case, the requirement of a lengthy appeal process would effectively make any remedy on appeal inadequate. Thus, even assuming that relators must show no adequate remedy by appeal, this is satisfied in this case.

B. The Missouri Charter Schools Act

In 1998, the Missouri General Assembly enacted the Charter Schools Act, which allows private groups and individuals to operate charter schools in certain urban school districts, such as the Kansas City, Missouri, School District. A copy of the Charter Schools Act, Mo. Rev. Stat. §§ 160.400-160.420, is attached hereto as Appendix Tab C, pp.A22-A31. Charter schools are considered independent schools that operate as nonprofit corporations, although they receive public funding. See Mo. Rev. Stat. § 160.400.1, 160.400.5. Thus, a perceived advantage of the Charter Schools Act is that charter schools can operate without the legal requirements that typically apply to public school districts while receiving public funding.

The following outlines the general process for establishing a charter school and the requirements for a charter school to remain in operation.

1. Charter Schools Are Required to Apply for and Obtain a Sponsor Through Submission of a Proposed Charter

Under §160.405, an individual, organization, or group desiring to establish a charter school must submit a proposed charter to a potential sponsor. Mo. Rev. Stat. § 160.405.1. Potential sponsors include: (1) the school board of the school district in which the school will be located; (2) a public four-year college or university with its primary campus in the school district or in a county adjacent to the county in which the district is located; (3) a community college located in the school district; or (4) the Missouri State Board of Education. Mo. Rev. Stat. §§ 160.400.2(1)-(3), 160.405.2(3).

The proposed charter must include the following items:

- (1) a mission statement for the charter school;
- (2) a description of the charter school's organizational structure and bylaws of the governing body;
- (3) a financial plan for the first three years of operation of the charter school, including provisions for annual audits;
- (4) a description of the charter school's policy for securing personnel services, its personnel policies, personnel qualifications, and professional development plan;
- (5) a description of the grades or ages of students being served;
- (6) the school calendar of operation;
- (7) the educational goals and objectives to be achieved;
- (8) a description of the charter school's educational program and curriculum;
- (9) the term of the charter, which cannot be less than five years, nor greater than ten years and must be renewable;
- (10) a description of the charter school's pupil performance standards; and
- (11) a description of the governance and operation of the charter school.

Mo. Rev. Stat. § 160.405.1, 160.405.1(1)-(5).

In addition to submitting and complying with the above requirements, a charter school must be “financially accountable, use practices consistent with the Missouri financial accounting manual, [and] provide for an annual audit by a certified public accountant....” Mo. Rev. Stat. § 160.405.5(4). A charter school is also required to “report to its sponsor ... and the state board of education as to its teaching methods and any educational innovations and the results thereof, and provide data required for the study of charter schools....” Mo. Rev. Stat. § 160.405.5(6).

2. Sponsor Review of a Proposed Charter

A sponsor may approve a charter once the sponsor determines: (1) that the statutory requirements for a charter are met and (2) that “the applicant is sufficiently qualified to operate a charter school.” Mo. Rev. Stat. § 160.405.2(1). That determination is at the proposed sponsor’s discretion. There is no statutory mandate requiring a potential sponsor to act as sponsor for an applicant whose application meets the criteria stated above. The only requirement imposed on a potential sponsor is that it must make a decision whether to approve a charter within 60 days of the filing of the proposed charter.

Id.

a. Procedures for Sponsor Approval of a Proposed Charter

If a sponsor approves the proposed charter, the charter must be submitted to the Missouri State Board of Education for final approval. If the State Board of Education disapproves the charter, the applicant may seek judicial review pursuant to the Missouri Administrative Procedure and Review Act (“MAPA”). Mo. Rev. Stat. § 160.405.3, 4.

Once a charter goes through final approval by the Missouri State Board of Education, the charter proposal becomes a contract between the School District and the applicant. Mo. Rev. Stat. § 160.400.5. Finally, a school district acting as a sponsor has the option of leasing physical facilities to the charter school. See Mo. Rev. Stat. §§ 160.405.8, 432.070 (outlining the requirements for a binding contract with a school district).

b. Procedures for Denial of a Proposed Charter

If a potential sponsor denies a proposed charter, the sponsor must notify the applicant in writing as to the reasons for its denial within 60 days of the filing of the proposed charter. Mo. Rev. Stat. §160.405.2(1), (2). At that point, the applicant may submit the proposed charter, along with the sponsor's written reasons for denial, to the State Board of Education. Mo. Rev. Stat. §160.405.2(3). The State Board of Education then has the option of approving and sponsoring the charter school on its own. Id. The original potential sponsor, however, has no further obligation to the proposed charter school. The Charter Schools Act does not provide an applicant with a right to judicial review of a potential sponsor's decision to deny a proposed charter. See generally Mo. Rev. Stat. § 160.405.

3. Process for Renewal of a Charter

Every charter must have a definite term, which must be no less than five years and no more than ten years. Mo. Rev. Stat. § 160.405.1(3). Every charter must also be renewable. Id. The statutes do not distinguish the procedure for renewal of a charter

from those procedures for initial charter application and review. See generally Mo. Rev. Stat. §§ 160.400-160.420.

4. Process for Revocation of a Charter

A sponsor has the right to revoke a charter at any time if the charter school commits a “serious breach” of one or more provisions of its charter or if it fails to meet academic standards, fails to meet generally accepted standards of fiscal management, or violates the law. Mo. Rev. Stat. § 160.405.7(1). In order to revoke a charter, the sponsor must notify the charter school in writing at least 60 days before acting to revoke the charter. Mo. Rev. Stat. § 160.405.7(3). The charter school may request a hearing in front of the sponsor. Id. The outcome of any hearing regarding revocation is subject to judicial review under the MAPA. Mo. Rev. Stat. § 160.405.7(4).

5. Limited Rights to Judicial Review of a Sponsorship Decision

As outlined above, § 160.405 of the Missouri Revised Statutes addresses the procedures relevant to obtaining a charter and revocation of a charter. Mo. Rev. Stat. § 160.405. Section 160.405 provides for judicial review in only two specific circumstances: (1) where the State Board of Education disapproves of a charter after it is approved by a sponsor and (2) where a charter is revoked for cause before the expiration of its term. See Mo. Rev. Stat. § 160.405.4, 160.405.7(4).

The Charter School Act does not provide a charter school with a right to judicial review regarding a sponsor’s decision not to accept an initial charter or to renew a charter. See generally Mo. Rev. Stat. § 160.400-420.

C. Relators' Decision Not To Renew The Westport Charter Is Not Subject To Judicial Review Pursuant To The Missouri Administrative Procedure Act.

The Missouri Administrative Procedure Act only provides for judicial review of agency decisions in limited circumstances. The MAPA does not provide that all agency actions are subject to judicial review. Rather, the MAPA provides for two types of judicial review: (1) contested case review pursuant to § 536.100-536.140 and (2) uncontested case review pursuant to § 536.150. A copy of the MAPA is attached in the Appendix, Tab D, pp. A32-A70.

Contested case review is triggered only when a party is legally entitled to a hearing in the underlying proceeding pursuant to statute, ordinance, other legal provision, or some legally protected due process right. See Mo. Rev. Stat. § 536.010(2); State ex rel. Yarber v. McHenry, 915 S.W.2d 325, 328 (Mo. 1995) (en banc). If a party seeking judicial review was not entitled to a hearing in the underlying proceeding, judicial review under § 536.100 to 536.140 is not available.

If there is no legal right to a hearing in the underlying administrative proceeding, a party may seek judicial review as an “uncontested case” in limited circumstances. Judicial review of an uncontested case under § 536.150 is only available if there is no other provision for judicial inquiry or review of such a decision. Mo. Rev. Stat. § 536.150.1. Moreover, judicial review of an uncontested case can only occur if the administrative decision determined the legal rights, duties, or privileges of a person and/or if there is a challenge to the process followed by the agency.

In this case, Westport was not entitled to a hearing regarding relators' decision not to renew its charter. Accordingly, the Circuit Court lacked jurisdiction to review relators' decision as a contested case. Similarly, Westport had no right to judicial review as an uncontested case under § 536.150.1 because the Missouri legislature specifically limited judicial review regarding charter-related decisions in § 160.405, thereby removing charter-related decisions from review under § 536.150.1. In addition, Westport was not entitled to uncontested case review because it did not have a legal right or privilege to a renewal of the charter and because Westport did not challenge the renewal procedures used by the School District inasmuch as it only claimed that it was entitled to revocation procedures, not renewal procedures.

1. Westport Had No Entitlement to A Hearing in the Underlying Proceeding, So That it Was Not Entitled to Judicial Review as a “Contested Case.”

The determination of whether an administrative proceeding involves a “contested case” depends on whether, under the law, the administrative body conducting the proceeding was required to provide a hearing in order to determine the legal rights, duties, or privileges of specific parties. See Mo. Rev. Stat. §536.010(2); State ex rel. Yarber v. McHenry, 915 S.W.2d 325, 328 (Mo. 1995) (en banc). A right to an administrative hearing may be created by statute, ordinance, or state or federal constitution. Yarber, 915 S.W.2d at 328.

a. Westport Had No Statutory Right to a Hearing.

Westport did not have a statutory right to a hearing in front of the School District's Board of Directors with regard to the Board's determination of whether to renew the charter. See Mo. Rev. Stat. §§ 160.400-160.420. Section 160.405 of the Missouri Revised Statutes addresses the procedures relevant to obtaining a charter, renewal of a charter, and revocation of a charter. Mo. Rev. Stat. § 160.405. Pursuant to these provisions, *there are only two limited circumstances in which charter-related decisions require a hearing or are otherwise subject to judicial review*: (1) when a sponsor approves a charter, and the State Board of Education subsequently disapproves the charter, the disapproval is subject to judicial review pursuant to Chapter 536 and (2) when a charter is revoked before the expiration of its term, the revocation is subject to judicial review. Mo. Rev. Stat. §§ 160.405.4 and 160.405.7. *There is no provision in the Charter Schools Act that provides plaintiff with a right to hearing or judicial review of the School District's decision not to renew its charter.* See generally Mo. Rev. Stat. §§ 160.400-420.

The Missouri legislature specified limited circumstances in which a party is entitled to administrative and judicial review. Because the statute does not require any particular procedures for renewal, nor does it allow for judicial review in the event of nonrenewal, the Court should construe those omissions as intentional decisions by the legislature not to provide procedural hearing rights or judicial review with regard to renewal. See Missouri Pub. Serv. Co. v. Platte-Clay Elec. Coop., 407 S.W.2d 883, 891 (Mo. 1966).

Westport's claims in this case do not fall within the limited scope of judicial review for agency decisions regarding charter schools. There is no contention that the Westport charter was ever disapproved by the State Board of Education. Thus, review is not available under §160.405.4. Moreover, as the Circuit Court correctly held, "it is clear that [the School District's decision] was not a revocation under Section 160.405."¹ Thus, a hearing was not required under § 160.405.7. Rather, the School District's decision was not to renew the Westport charter. Accordingly, Westport was not entitled to a hearing. Westport's only remedy, which it chose not to pursue, was to seek potential sponsorship by the Missouri State Board of Education. Mo. Rev. Stat. § 160.405.2(3).

¹ In this regard, the Circuit Court's Order is inherently inconsistent. The Circuit Court specifically held that the School District's decision was not for revocation and that the procedure for renewal and amendment was the same as the procedure for granting the original charter application. See Order Granting Preliminary Injunction ¶6, Appendix, Tab A, p. A5. However, the Circuit Court also held that the District somehow failed to follow this procedure. Id. It is undisputed that the only procedure for the initial consideration of a charter is that the prospective sponsor approve or disapprove of the charter in writing within 60 days of the date the charter was presented to the sponsor. Mo. Rev. Stat. §160.405(1), (2). There is no dispute that this procedure was followed and that Westport was notified that its charter would not be renewed within 60 days of submitting its revised charter renewal application.

b. The Underlying Agency Decision Involved a Renewal Decision and Not a Revocation Decision.

The Missouri Charter Schools Act mandates that all charters contain “[t]he term of the charter, which shall be not less than five years, nor greater than ten years and shall be renewable....” Mo. Rev. Stat. § 160.405.1(3). The parties do not dispute that the charter that Westport drafted did not contain a term. However, in light of the legislative intent behind the Charter Schools Act, the clear intent of the parties, and recognized rules of contract interpretation, the term of the Charter should be construed as a five-year term that expired on June 30, 2004.

c. The Legislative Intent Behind The Charter Schools Act Supports Applying a Five-Year Term To The Westport Charter Agreement.

The primary rule of statutory construction is to ascertain the legislative intent from the language used and to give effect to that intent if possible and to construe the words in their plain and ordinary meaning. Murray v. Missouri Highway & Transp. Comm’n, 37 S.W.3d 228 (Mo. 2001) (en banc). When the legislative intent cannot be determined from the plain and ordinary meaning of the words and the statute is ambiguous, the statute should be given a reasonable reading and construed consistent with the legislature’s purpose in enacting it. Blue Cross & Blue Shield of Kansas City, Inc. v. Nixon, 26 S.W.3d 218, 228 (Mo. Ct. App. 2000). The legislature’s objective can be gleaned from identifying the problems sought to be remedied and the circumstances and

conditions existing at the time of enactment. In the Interest of R.T.T., 26 S.W.3d 830, 834-35 (Mo. Ct. App. 2000).

The Court of Appeals in this case analyzed the legislative intent regarding the term of a charter, explaining as follows:

The [Charter School] Act's application was limited to certain urban districts where there were serious concerns about academic achievement and whether traditional approaches of public education through the existing public school district system were best suited to correcting those problems. Charter schools, which could operate without traditional bureaucratic and legal constraints and could, perhaps, make more innovative and responsive curriculum changes, were seen as a possible benefit and a possible middle ground to traditional public schools and purely private schools. Obviously, the legislature was concerned that this experiment get a valid chance and, therefore, established a five-year minimum for charters. Just as obviously, in our view, because of the experimental nature of this approach, the legislature specified that charters could be for not more than ten years. The legislature also wanted to give potential charter schools and sponsors some flexibility if they believed that a particular operation should have a term of more than five years but less than ten years to evaluate its effectiveness.

See Opinion by Court of Appeals, attached at Appendix Tab B, p. A14, A15.

In this case, it is inconsistent with the intent of the statute to impose judicially a contractual commitment on the School District beyond the minimum required by statute

because there is no evidence of any intent by the School District to be bound beyond this minimum timeframe. This is particularly true because charter sponsorship is completely voluntary. Sponsors have absolute discretion in deciding whether or not to become a sponsor in the first place. The Court of Appeals therefore held that, based on review of the Act and the policy considerations underlying it, the Act should be construed narrowly. The legislature did not intend to commit sponsors and charter schools to a charter for more than the minimum period of five years, absent specific intent of the parties expressed within the charter. Id. at p. A15. Thus, the Westport charter expired at the conclusion of the 2003-2004 school year on June 30, 2004. Id. The intent of the statute suggests that the Court of Appeals was correct in holding that as a matter of law, in the absence of specified term, a charter is limited to a five-year term, absent renewal by the parties. Id.

d. Applying a Five-Year Term is Consistent with the Intentions of the Parties to the Charter Agreement.

In addition to being consistent with the legislative intent of the Charter Schools Act, applying a five-year term is also consistent with the intent of the parties to the charter agreement itself. As set forth fully in the proceeding Statement of Facts, the evidence presented to the Circuit Court during the evidentiary hearing overwhelmingly showed that the School District only intended to be bound by a five-year charter agreement. The unrebutted testimony from Dr. Taylor, Superintendent of the School District; Jocelyn Strand, the Director of Charter Schools for the Missouri Department of Elementary and Secondary Education; and Bonnie McKelvy, Financial Officer for the

School District, all support the conclusion that the parties intended the term of the charter agreement to be five years. Moreover, the charter application referred to a contract between Westport and Edison Schools, Inc., whereby Edison would manage all of Westport's operations and programs. The Edison contract specifically referred to a five-year term, thus supporting the conclusion that the parties only intended a five-year charter term. (See Statements of Fact ¶VI, at pp. 16-18 and record cites contained therein). During the hearing before Circuit Court, *there was absolutely no evidence from either party indicating any intent that the charter be for a term longer than five years.*

Westport concedes that there is no evidence of any intent to be bound to a ten-year charter term, but argues that the Court should nonetheless contractually hold the School District to such a term. Westport's argument should be rejected because it is contrary to the parties' intentions and to the general principles regarding contract interpretation.

"The cardinal principle for contract interpretation is to ascertain the intention of the parties and to give effect to that intention." Butler v. Mitchell-Hugeback, Inc., 895 S.W.2d 15, 21 (Mo. 1995) (en banc). Even though the charter agreement is silent as to its term, all of the evidence presented to the Circuit Court indicates that the parties intended a five-year term. Thus, the Court should construe the charter to provide for a five-year term.

Moreover, even if this Court determines that the intent of the parties cannot be determined through the use of parol evidence, the language of the charter agreement should be construed against Westport, the drafter of the agreement. See Missouri Consol. Health Care Plan v. BlueCross Blueshield of Missouri, 985 S.W.2d 903, 910 (Mo. Ct.

App. 1999) (where a contract is ambiguous, and the parties' intent cannot otherwise be determined from parol evidence, the court construe the terms of the contract against the party responsible for drafting its terms). Westport drafted the charter that purported to contain all material terms required under § 160.405. Westport is therefore responsible for any ambiguity resulting from Westport's failure to specify the term. See Barry Harbor Homes Assoc. v. Ortega, 105 S.W.3d 903, 908 (Mo. Ct. App. 2003). The ambiguity should be construed against Westport, and not the School District, which merely sent a letter indicating its agreement to act as sponsor. Id. ("the established principle of contract law is that any ambiguity in a written instrument should be construed against the party [that] drafted the ambiguous language"), citing Disabled Veterans Trust v. Porterfield Constr., Inc., 996 S.W.2d 548, 552 (Mo. Ct. App. 1999). Because Westport drafted the material portions of the charter agreement and is responsible for omission of the term, the charter contract should be construed against Westport and the Court should construe a five-year term. Id.

The statutory intent of the Charter Schools Act, the intent of the parties, and established rules of statutory construction all indicate that a five-year term should be applied to the Westport Charter. Accordingly, the Westport Charter expired as of June 30, 2004, and the School District's decision being challenged by Westport can only be construed as a decision of nonrenewal – a decision that does not require an agency hearing and, therefore, is not subject to judicial review as a contested case.

e. Westport Had No Constitutional Right to a Hearing.

The only other basis for plaintiff to claim a right to a hearing in the underlying agency proceeding is pursuant to constitutional due process rights. The analysis of whether a party's constitutional procedural due process rights have been violated requires an initial threshold determination – whether the party has a legally protected life, liberty, or property interest at stake. Clark v. School Dist. of Kansas City, Missouri, 915 S.W.2d 766, 770 (Mo. Ct. App. 1996). This is because “[t]he requirements of procedural due process apply only to the deprivation of interests encompassed by the Fourteenth Amendment’s protection of liberty and property ... [and] the range of interests protected by procedural due process is not infinite.” Id., citing Board of Regents v. Roth, 408 U.S. 564, 569-70 (1972). A property interest in a continued contract, such as the charter in this case, can be created by statute, ordinance, or by an express or implied contract. See Clark at 770 (addressing right to continued employment), citing Bishop v. Wood, 426 U.S. 341, 344 (1976).

In this case, plaintiff fails to cite to any statute, contract, or other legal authority under which plaintiff has an explicit, legally protected interest in continued sponsorship by the School District. The mere fact that a charter is “renewable” under the Charter Schools Act does not in itself create any protected interest in further renewal. “Renewable” is defined as “[c]apable of being renewed; as, a lease renewable at pleasure.” Webster’s Revised Unabridged Dictionary (1996); see also The American Heritage Dictionary of the English Language (4th Ed. 2000) (“That can be renewed; a renewable membership; renewable subscriptions.”). The Missouri legislature did not

state that a charter “shall be renewed,” only that it “shall be renewable.” Mo.Rev.Stat. § 160.405.1(3).

Because Westport had no continued right to sponsorship beyond June 30, 2004, the Board’s decision not to renew the charter triggered no due process right. A governmental entity’s decision not to renew a contract does not alone trigger due process rights. *See, e.g., Board of Regents v. Roth*, 408 U.S. 564, 576 (1972) (holding that employee’s due process rights were not triggered by decision to not renew his contract without some contractual or other legal basis for claiming a right to continued employment); *Mills v. Steger*, 64 Fed. Appx. 864, 869 (4th Cir. 2003) (unreported) (holding that although a contract was annually renewable, this did not create a legally protected interest in future contracts); *Bauers v. Board of Regents*, 33 Fed. Appx. 812, 816 (7th Cir. 2002) (unreported) (holding that a fixed-term, renewable contract did not created a protected property interest in future, renewed contracts); *Bunger v. Univ. of Oklahoma Bd. of Regents*, 95 F.3d 987, 990 (10th Cir. 1996) (holding that untenured professors did not have any right under state law or contract to continued employment); *Windham v. City of New York*, 405 F. Supp. 872, 875 (S.D. N.Y. 1976) (denying plaintiffs’ request for injunctive relief to stop a city from discontinuing payments to a day care center where there was no evidence of a contractual or other statutory entitlement to continued funding of the day care).

Finally, other jurisdictions that have decided the issue of whether renewal of a charter implicates due process rights have held that renewal does not implicate constitutional due process rights. In *I/M/O Grant of Renewal App’n of the Red Bank*

Charter Sch., 843 A.2d 365 (N.J. Super. Ct. 2004), attached at Appendix Tab E, pp. A71-A82, a school board appealed the decision of the State Board of Education affirming the Commissioner of Education’s approval of a charter school’s renewal application and expansion. Under the New Jersey statutes and regulations authorizing charter schools, the Commissioner of Education is the party responsible for deciding charter applications and renewal applications. Id. at 369. The charter school in Red Bank sought renewal for an additional five years, along with expansion of its school programs. Id.

The court in Red Bank rejected the school board’s due process claim that an adjudicatory hearing should have been held as a part of the renewal determination. Id. at 372-373. In so holding, the court found that the New Jersey statutes and regulations, similar to the Missouri statutes in this case, did not explicitly require a hearing on renewal decisions. Id. at 372. The court therefore concluded that the statutes and regulations did not “provide greater process for the renewal of a charter than that provided in its initial approval.” Id. Rather, the Commissioner was delegated authority to develop procedures and guidelines for renewal. Id. The court further concluded that the legislature, by omitting any appeal right in the statutes, “did not intend to subject the renewal of a charter school to adjudicative proceedings accompanied by a full panoply of procedural protections.” Id. at 373; see also Mosaica Academy Charter Sch. v. Pennsylvania, 813 A.2d 813, 818-819 (Pa. 2002) (holding that where the legislature provided for an appeal procedure for a charter applicant to appeal the *denial* of a charter application and appeal from such decision, the legislature’s omission of an appeal

procedure for a decision to *grant* a charter was “deliberate,” and that therefore the court would not require an appeal procedure), attached at Appendix Tab F, pp. A83-A96.

Like the New Jersey statutes at issue in Red Bank, the Missouri statutes do not contain any requirement for a hearing as a part of a renewal decision. See generally Mo. Rev. Stat. § 160.405. Thus, the Missouri legislature’s omission of an appeal procedure presumably was deliberate. See Missouri Pub. Serv., 407 S.W.2d at 891; Red Bank, 843 A.3d at 373, attached Appendix Tab E, pp. A71-A82; Mosaica, 813 A.2d at 818-819, attached at Appendix Tab F, pp. A83-A96.

In sum, Westport cannot show a contract or other statutory right to continued sponsorship by the School District beyond June 30, 2004. Without such a right, plaintiff cannot show that there is any legally protected property interest at stake because a decision not to renew a charter does not implicate any due process rights. Red Bank at 372-73. Because Westport was not entitled to a hearing regarding the School District’s Decision not to renew the Westport Charter and because Westport had no legally protected right to continued charter sponsorship by the School District, the School District’s decision is not subject to judicial review as a “contested case.”

2. The Circuit Court Did Not Have Jurisdiction to Review the Underlying Proceeding as an “Uncontested Case.”

It was not until this matter was before the Court of Appeals that Westport attempted to claim that the Circuit Court had jurisdiction to review the matter as an uncontested case under § 536.150 of the Missouri Revised Statutes. A party is entitled to judicial review under § 536.150 only if the underlying proceeding determined the “legal

rights, duties or privileges” of a person....” Mo. Rev. Stat. §536.150.1. In this case, Westport’s late attempt to invoke the Court’s jurisdiction under §536.150 fails because the underlying proceeding did not involve determination of Westport’s legal rights or privileges. As outlined above, the decision to sponsor or renew a charter is completely at the will of the proposed sponsor. See Mo. Rev. Stat. § 160.405. The statutory framework does not set forth any conditions or requirements that must be triggered before a sponsor may decline to enter or renew a charter agreement. Id. The decision to decline to enter or renew a charter agreement may be made for any reason or no reason at all. Such decisions are not subject to “uncontested case” judicial review. See Mosley v. Members of the Civil Serv. Bd. For the City of Berkeley, 23 S.W.3d 855, 859 (Mo. Ct. App. 2000) (holding that at-will probationary employee was not entitled to judicial review of the agency decision to terminate her employment because her employment could be terminated with or without cause).

The only other basis for judicial review under §536.150 regards whether the agency followed required procedures in the underlying proceeding. See Mosley 23 S.W.3d at 860. However, because there is no dispute that the School District complied with the procedural requirements for a renewal in that it treated the renewal as an initial charter application, and provided notice of its decision within 60 days, there is no other basis for judicial review as an uncontested case.

Finally, the Missouri legislature specifically limited administrative and judicial review regarding charter school decisions in § 160.405, thereby removing this from uncontested review under § 536.150.1. Under § 160.405, Westport has no statutory right

to further review of the agency proceeding. Because the Missouri legislature specifically limited judicial review and did not provide for it in this scenario, plaintiff may not invoke judicial review under § 536.150.1 as an uncontested case. See Mo. Rev. Stat. § 536.150.1; Cooper v. Missouri Bd. of Probation and Parole, 866 S.W.2d 135, 137 (Mo. 1993) (en banc).

In Cooper, inmates sought judicial review of the Parole Board’s denial of their parole requests. Id. at 136. The inmates claimed that judicial review was proper under § 536.150.1 as an uncontested case. However, as the Court explained, § 536.150.1 provides for review of a noncontested case only when “there is no other provision for judicial inquiry into or review of such decision.” Id. at 137, citing Mo. Rev. Stat. § 536.150.1. The Court noted that the Missouri legislature had promulgated statutes specifically limiting when and on what grounds a party could appeal an order by the Parole Board in Missouri Revised Statutes §§ 217.650-217.810. Id. at 137. Under those statutes, the inmates were not entitled to judicial review. The Court held that because the legislature had outlined the limited situations where review was available in these statutes, those “provision[s] for review [took] parole board decisions *outside the scope of section 536.150.1.*” Id. (emphasis added). In this case, § 160.405, providing for limited review in certain specified circumstances, has the effect of removing charter-related decisions from judicial review under § 536.150.1. See id.

Because there are no grounds for judicial review of the School District’s decision not to renew the Westport charter, the Circuit Court does not have subject matter jurisdiction over this dispute and a writ of prohibition is mandated. See State ex. Rel.

Gaydos v. Blaeuer, 81 S.W.3d 186, 190 (Mo. Ct. App. 2002), citing State ex rel. Armstrong v. Kohn, 850 S.W.2d 86, 89 (Mo. 1993) (en banc).

II. The Court Should Issue a Writ of Prohibition Because the Circuit Court Exceeded Its Jurisdiction by Forcing the School District to Open Public School District Buildings for Westport’s Use And by Prohibiting the School District From Using School District Property in a Manner the School District Deems Appropriate.

Point relied on: Relator is entitled to an order prohibiting respondent from ordering the School District to continue to open its school facilities to Westport and to refrain from contacting School District employees who are assigned to work at Westport regarding their employment because the Circuit Court exceeded its jurisdiction in its order and the effect is contrary to relators’ legal obligations as a public school district.

A. Westport Has No Contractual or Other Legal Basis For Claiming an Entitlement to Occupy Public School District Property.

The Circuit Court’s Order granting preliminary injunctive relief to Westport is premised on the fundamentally flawed assumption that Westport has a legal “right” to occupy and use the public school buildings that are owned by the School District. Throughout this matter, it has been undisputed that there is no lease or other contractual basis for Westport to claim an entitlement to use and occupation of the public’s property. Rather, the record indicates that the School District allowed plaintiff to use the buildings during the term of its charter without charging rent or other operating expenses. Because

there is no written, signed contract providing for Westport's use and occupation of the buildings that complies with Missouri Revised Statutes § 432.070, there is absolutely no legal basis for any claim by Westport of a contractual right to continue to occupy the buildings. See Mo. Rev. Stat. § 432.070 (providing that a public school district may only be contractually bound by a written contract that is signed and that contains certain material terms). Finally, any equitable claim Westport may have regarding its use and possession of the buildings also fails under § 432.070. See Goodyear v. Junior College Dist. of St. Louis, 540 S.W.2d 621, 622 (Mo. Ct. App. 1976); Neal v. Junior College Dist. of East Central Missouri, 550 S.W.2d 580, 582 (Mo. Ct. App. 1976).

B. Under Missouri Law, the School District Has the Authority to Use School District Property In a Manner it Deems Fit.

Westport's claimed "right" to occupy and use public property in order to operate its school is contrary to Missouri law. It is the public policy and law of Missouri that public school districts have the authority to use public school property in a manner that the school districts deem appropriate. See Coalition to Preserve Educ. of the Westside v. School Dist. of Kansas City, 649 S.W.2d 533, 536 and 549 (Mo. Ct. App. 1983); see also Mo. Const., Article IX, § 1(a) (vesting the Missouri General Assembly with control over public education and maintenance of public schools); Mo. Rev. Stat. § 177.131 (providing that the board of directors of public school districts shall establish "an adequate" number of elementary/secondary schools, select and procure suitable locations therefore, and furnish suitable buildings).

In Westside, the court held that under this constitutional and statutory framework, the School District has the discretion and power to open and close School District buildings in a manner it deems appropriate. Id. at 536-537. The School District's authority and discretion in this regard cannot be contracted or delegated away. See id. This is because control of public school buildings serves the primary purpose of public school districts – to educate children in the school district. Id. at 537, citing Kansas City v. School Dist. of Kansas City, 356 Mo. 364, 201 S.W.2d 930, 933 (1947).

Moreover, there is no requirement in the Charter Schools Act that a sponsor provide buildings or other financial support to any charter school that chooses to sponsor. The Circuit Court's decision not only implies a term of charter sponsorship to which the School District did not agree, but also forces the School District to relinquish the use of its property in a way that is not provided for in the charter agreement and that is contrary to this State's law and public policy.

Under the Missouri constitution and statutes, as well as Missouri case law, the School District has the authority and discretion to use the buildings occupied by Westport in a manner the School District deems appropriate. The Circuit Court exceeded its jurisdiction by enjoining the School District from the use of its property and, in effect, forcing a lease upon the District that it did not agree to and which does not comply with the legal standards required by State law.

III. Conclusion

For the above-stated reasons, relators respectfully move the Court to issue an order prohibiting respondent from granting Westport preliminary injunctive relief or from

otherwise exercising jurisdiction over this matter and to order that the respondent dismiss plaintiff's Petition in its entirety with prejudice.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify a copy of the foregoing was served by hand delivery, this 27th day of August, 2004 upon:

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CERTIFICATE PURSUANT TO RULES 84.06 and 84.06(g)

Pursuant to Mo. R. Civ. P. 84.06, I hereby certify that the forgoing document includes the information required by Rule 55.03 and complies with the limitations contained in Rule 84.06(b). The forgoing brief contains 10,888 words.

Pursuant to Mo.R.Civ.P. 84.06(g), relators further certify that the floppy disk being filed has been scanned for viruses and that it is virus free.

Attorney